SUPREME COURT, U. S.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,
Petitioner,

vs.

ROY O. HOFFMAN, Director, Region 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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3. Order ..... Attached

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The petitioner, International Longshoremen's and Warehousemen's Union, Local No. 10, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 25, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 492 F.2d 929, appears in the Appendix hereto. No opinion was rendered by the District Court for the Northern District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 25, 1974, and was amended on March 7, 1974. A timely petition for rehearing, together with a suggestion that the case be reheard *en banc,* was denied on March 26, 1974 and this petition for certiorari is being filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED

1. May a labor organization be held in civil contempt upon a mere "preponderance of the evidence"; is not the more stringent standard of "clear and convincing evidence" required?

2. May a labor organization be held in civil contempt where the record fails to show that it or its officers or agents had "actual notice" of the "specific terms" of the injunction? (Fed. Rules Civ. Pro., Rule 65[d]).

RULES INVOLVED

The case involves the non-statutory rule that a party may not be held in civil contempt unless the evidence is "clear and convincing" and that a mere "preponderance of the evidence" is not sufficient.

It also involves Rule 65(d) of the Federal Rules of Civil Procedure which provides:

> *Form and Scope of Injunction or Restraining Order.*
>
> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

STATEMENT OF THE CASE

The case arose out of a labor dispute between San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (hereinafter Typographers) and California Newspapers, Inc., d/b/a the Independent Journal (hereinafter Journal), an employer engaged in publishing a newspaper in Marin County, California. During the course of that dispute, Typographers picketed, at a dock in San Francisco, newsprint which was destined for Journal's printing plant.

On the basis of charges filed by Journal with the National Labor Relations Board (hereinafter the Board) against Typographers and against Teamster Locals 85 and 287, which were respecting the picket line or somehow otherwise involved in the picketing, the Regional Director of the Board's Twentieth Region (hereinafter the Director) invoked the jurisdiction of the district court, pursuant to Section 10(1) of the National Labor Relations Act, as amended (29 USC 160[1]) and procured, on February 11, 1970, an *ex parte* order enjoining Typographers from picketing cargo or shipments of newsprint or other supplies awaiting delivery to Journal at or in the vicinity of Pier 45A at the Port of San Francisco. On February 13[1] the district court issued a temporary injunction identical, in substantive terms, to the *ex parte* order.

The injunction was based upon a finding that the Director had reasonable cause to believe that Typographers and Locals 85 and 287 were engaged in a scheme "to boycott newsprint cargo at the Port of San Francisco destined for Journal and to prevent the delivery of such supplies to Journal by means of picketing, instructions and appeals to . . . employees at the Port of San Francisco not to receive, load, transport, deliver, handle or work on any such cargo". (R. 434).[2]

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[1]All dates are in 1970 unless otherwise specified.

[2]"R" references are to pages of the Clerk's Record, comprising volumes 1 through 6 of the record on appeal. "Tr." references are to pages of the Reporter's Transcript, comprising volumes 7 through 28 of the record on appeal. "Exh" references are to the exhibits introduced in the district court.

The court of appeals described the situation as one involving "picketing and inducing employees of various neutral employers at the Port of San Francisco to interfere with and prevent delivery of newsprint to the Journal" (492 F.2d at 931) and it described the February orders as "enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint." (*Ibid* at 931-932).

Although petitioner was not a party to the Board proceeding or to the district court action, a copy of the *ex parte* order, which expired by its own terms at 5 p.m. on February 13, was served earlier that day on one of petitioner's office employees. The temporary injunction was never served on petitioner. So far as the record reveals, these February orders had their desired effect: no picketing of Journal's newsprint or other supplies at the San Francisco docks occurred thereafter.

No further proceedings took place until April when the Director filed a second petition in the district court. This petition did not charge a contempt of the February orders; rather it alleged that Typographers were now picketing in Marin County "at the entrances to various retail stores . . . to induce the public not to patronize the stores because they were advertising in the Journal" (492 F.2d at 932) and prayed for an injunction against this conduct. Typographers stipulated that it would not contest the facts charged, waived a hearing and consented to the issuance of the injunction as prayed. This injunction, issued on April

28, prohibited Typographers from picketing the Marin County advertisers.[3] Petitioner was not a party to the proceedings which resulted in the April injunction and, as already noted, it was not a party to the underlying Board proceeding. The April injunction was never served on petitioner until after the occurrence of the events upon which the contempt was founded[4] and there is no evidence that petitioner ever had "actual notice" (Fed. Rules Civ. Proc., Rule 65[d]) of that order.

No further proceedings were had until October 10[5] (eight months after the issuance of the February orders and six months after the issuance of the April order) when the petition in the present case was filed, seeking adjudications in both civil and criminal contempt not only against Typographers, but also against Teamster Local 85, Teamster Local 70 (which so far as the record shows had like petitioner, also not theretofore been involved in any of these proceedings), against certain officers of said organizations, and against petitioner. The October petition alleged that both the February and the April orders

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[3]The Director in his brief to the court of appeals recognized that the "subject" of the April order was "retail store picketing" (p. 43) and that the February orders dealt only with "activity at the Port of San Francisco" (p. 16).

[4]In his brief to the court of appeals the Director acknowledged that the only order timely served upon petitioner was the *ex parte* temporary restraining order of February 13 (pp. 9, 46).

[5]In May, the Board had instituted civil contempt proceedings against Typographers and several of its officers. These proceedings, charging retail store-advertiser picketing in Marin County, were based on alleged violations of the *April* injunction. *National Labor Relations Board v. San Francisco Typographical Union, No. 21*, 465 F.2d 53, 55-56 (9 Cir. 1972).

had been violated. However, it did not allege that there had been any picketing at the dock in San Francisco to prevent the delivery of newsprint or supplies to Journal; it alleged only that there had been picketing early in October of Journal's advertisers in Marin County. This latter was the subject of only the April injunction—of which petitioner had had no notice.

The only evidence introduced on the trial of the contempt charges so far as it related to petitioner concerned picketing of the retail advertisers in Marin County. Petitioner insisted below that Rule 65(d) required a dismissal of the proceedings against it because it had no "actual notice" of the injunction which dealt with that matter. The Director argued, however, that service of the February *ex parte* order put petitioner on notice that it was enjoined until February 13 "and probably thereafter . . . from engaging in secondary boycott activity in furtherance of the Journal strike". He further argued that "reason dictates that . . . [petitioner] was under an obligation to inquire" whether the Court had made any further order.[6]

It is difficult to understand how the service of an order which on its face expired on the day it was served could have put petitioner on notice that it was "probably" enjoined "thereafter". It is more difficult to understand how Rule 65's requirement of "actual notice" can be squared with the suggestion that peti-

[6]The quotations are from the Director's brief to the court of appeals (p. 46).

tioner had an "obligation to inquire" whether a "further" and, as it turned out, a different order had been entered. Finally, it is even still more difficult to understand how the service of an order relating to picketing of newsprint at San Francisco docks in February put petitioner on notice that picketing of retail advertisers in Marin County ten months later was also prohibited.

In the event, the district court did proceed against petitioner as well as against the other respondents in both civil and criminal contempt. The overwhelming bulk of the evidence was introduced during the criminal phase of the trial, and both courts below appear to have directed their attention to problems relating to the criminal aspects of the proceeding. The evidence relating to petitioner, compared to that relating to the other respondents, was quite insignificant.[7]

The district court ultimately found petitioner not guilty of criminal contempt, but found that the allegations of civil contempt against it had been established *"by a preponderance of the evidence"* and imposed upon petitioner compliance fines of $7,500 a day and a compensatory fine of $21,208.15.

The court of appeals affirmed, without considering petitioner's arguments that it had been improperly

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[7]The evidence against petitioner related to the chartering of a bus by petitioner to transport persons to Marin County on October 16 and to picketing by "longshoremen" on that date. Service of the April order was not made on petitioner until October 19—three days after it had allegedly violated that order. Once it had notice of the April order, petitioner, upon the advice of counsel, forthwith discontinued any participation in the activity in Marin County (R. 1280-1281; Tr. 2748-2749).

convicted of the civil contempt (a) because it had no notice of the order dealing with the Marin County retail store-advertising picketing and (b) because the district court had applied an impermissible standard of proof to the evidence in the civil case.

REASONS FOR GRANTING THE WRIT

(1) Irrespective of any other considerations in this case and irrespective of the disposition of any petitions for writs of certiorari which may be filed by any other parties, this petition should be granted in this civil contempt case to resolve the conflict of the decision below with a decision of this Court and with the decisions of other courts of appeals on the question of the proper burden of proof in a civil contempt proceeding.

The district court acquitted petitioner of criminal contempt, since it found that the allegations against petitioner had not been proved "beyond a reasonable doubt" (492 F.2d at 932; R. 1218-1219).[8] In applying that standard to the criminal case, the district court was, of course, correct. However, when it came to weighing the evidence in the civil case, the district court held (R. 1199; Tr. 2639), and the court of appeals affirmed it (492 F.2d at 932), that a "prepon-

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[8]The district court stated that petitioner's acquittal of criminal contempt was based "upon the fact that . . . their [sic] involvement here has not been sufficiently brought home to the Union itself in such a manner as to convince me that whatever they did was done contemptuously." (Tr. 2639).

derance of the evidence" was sufficient to support a finding of civil contempt against petitioner.

This decision not only conflicts with a decision of this Court and with decisions of other courts of appeals, as we show below, but has a profoundly unsettling effect upon the long-established rule that civil contempts must be established by clear and convincing evidence.[9]

The Director, in his brief below, conceded (p. 57) that "the prevailing weight of authority is that civil contempt must be demonstrated by clear and convincing evidence."[10] But he argued that ". . . the

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[9]3 Barron and Holtzoff, *Federal Practice and Procedure* (1971 Pocket Part) 378 (§1439); 3 Wright, *Federal Practice and Procedure*, 162 (§705); Moskovitz, *Contempt of Injunctions, Civil and Criminal*, 43 COLUMBIA L. REV. 780, 818-819 (1943).

[10]The Director understated the case when he spoke of the rule as being supported by "the prevailing weight of authority" (*ibid* 57). The decisions, as we show below, are virtually unanimous. The two cases cited by the Director to the effect that there has been "some disagreement . . . as to the proper standard of proof" (*ibid*) do not establish any "disagreement." (a) *Schauffler v. Local 1291*, 292 F.2d 182 (3 Cir. 1961), *reversed* a civil contempt precisely because the evidence was not "clear and convincing" (292 F.2d at 190). (b) The language in *United States v. Jacobs*, 323 F.Supp. 1299, 1302 (C.D. Calif. 1971) that "only a preponderance of evidence is required" is not only contrary to all of the authority referred to below, but it was manifestly *dicta*, for in that case the court, finding the evidence "unsatisfactory", even under its view of the appropriate standard (at 1302), *acquitted* the defendant of the civil contempt.

Nor does *Cliett v. Hammonds*, 305 F.2d 565, 570 (5 Cir. 1962), cited in *Jacobs*, support the view that there is a "disagreement" on this question. There the court (at 569) found that "there is simply no doubt" that respondent had violated the injunction—which is quite a different thing from saying that the violation was established by only a preponderance of the evidence. In any case the cases considered below demonstrate that the rule in the Fifth Circuit, as in the others, requires that civil contempt be established by clear and convincing evidence.

[district] Court found the elements of both civil and criminal contempt had been established beyond a reasonable doubt" (p. 58) and, therefore, the civil contempt was proved by clear and convincing evidence so that the reference in the court's judgment to a preponderance of the evidence was "immaterial" (*ibid*). The trouble with this argument is that its premise is not supported by the record, at least as to petitioner. As to petitioner, the district court did not find that any elements of either contempt had been proven beyond a reasonable doubt; on the contrary, it entered a "Finding of Not Guilty and Judgment of Acquittal" in the criminal contempt, specifically finding, as to petitioner, that "the allegations of said petition have not been proved beyond a reasonable doubt" (R. 1218-1219). Thus, whatever may be the case as to other parties, the findings in the criminal case cannot serve to validate what the district court did to petitioner in the civil case.

Nor is it correct, as the Director argued in his brief below (p. 58), that the findings in the civil and criminal contempts were "substantially identical in all respects save one; namely that as to [petitioner] the Court found the extent of [its] involvement fell short of demonstrating the wilfulness which is an element of the criminal, but not civil, contempt." The district court never made any such finding. At the only place in the record when the district court stated the basis for its findings relating to petitioner, it did not say that petitioner's "involvement" fell short of demonstrating "wilfulness". Rather, it said, *supra*

n. 8, that petitioner's "involvement has not been sufficiently brought home to the Union itself in such a manner as to convince me that whatever they [sic] did was done contemptuously". (Tr. 2639). This is certainly not a finding (and there is none other in the record) that the contempt case against petitioner had been established by clear and convincing evidence.

The rule requiring that the evidence in civil contempt must be clear and convincing is applicable not only to injunctions obtained by administrative agencies like the Board, but heretofore has been held to govern in the whole panoply of federal contempt proceedings: anti-trust suits, legislative committees, and grand juries, to name just a few. The implications of the contrary rule announced in the decision below are therefore enormous.

The reason for the rule that civil contempt must be established by clear and convincing evidence derives, of course, from the nature of a contempt proceeding and from the awesome power which is reposed in a court once it has found a party in contempt. In this very case the imposition of substantial "compliance fines" and "compensatory fines" indicates the quasi-criminal nature of the civil contempt proceeding and establishes the importance of applying the appropriate standard of proof to the evidence. This is not, after all, a mere civil action for the recovery of damages.[11]

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[11]Since the district court was not "convinced" that whatever petitioner did was done "contemptuously" (*supra*, n. 8), it is difficult to understand how, by applying the proper (or indeed any) standard of proof, any contempt adjudication against petitioner can be allowed to stand.

For these reasons the law is virtually unanimous that a civil contempt may not be established by a mere preponderance of the evidence. It requires that the evidence upon which a civil contempt judgment rests must, at the least, be "clear and convincing". An unbroken line of cases so holds:

This court:

Oriel v. Russell, 278 U.S. 358, 364 (1929):

("The court ought not to issue [a contempt] order . . . merely on a preponderance of the evidence".)

And among the circuits:

2nd:

Stringfellow v. Haines, 309 F.2d 910, 912 (2 Cir. 1962):

(" . . . in civil contempt . . . , 'a bare preponderance of the evidence will not suffice . . . Proof of violation must be clear and convincing . . . '.")

Hart Schaffner & Marx v. Alexander's Dept. Stores, Inc., 341 F.2d 101, 102 (2 Cir. 1965):

("A civil contempt order will not issue unless there is 'clear and convincing' proof of a violation of a court decree; a bare preponderance of the evidence will not suffice.")

3rd:

Fox v. Capital Co., 96 F.2d 684, 686 (3 Cir. 1938):

"The plaintiff has a heavy burden to show a defendant guilty of civil contempt. It must be done by 'clear and convincing evidence'.")

Schauffler v. Local 1291, 292 F.2d 182, 190 (3 Cir. 1961):

("... more than a mere preponderance of the evidence ... It must be done by 'clear and convincing evidence'.")

4th:

National Labor Relations Board v. Standard Trouser Co., 162 F.2d 1012, 1014 (4 Cir. 1947):

("... more than a mere preponderance of the evidence; ... clear and convincing proof is necessary.")

5th:

National Labor Relations Board v. Tupelo Garment Co., 122 F.2d 603, 606 (5 Cir. 1941):

("... clear and convincing evidence ...")

A. H. Robbins Co. v. Fadely, 299 F.2d 557, 559 (5 Cir. 1962):

("... clear and convincing evidence.")

National Labor Relations Board v. Alamo Express, Inc., 395 F.2d 481, 482 (5 Cir. 1968):

("... the Board was required to establish civil contempt by clear and convincing evidence".)

6th:

Telling v. Bellows-Claude Neon Co., 77 F.2d 584, 585 (6 Cir. 1935):

("... before civil contempt may be adjudged and penalties therefor imposed, contemptuous acts must be established by evidence that is clear and convincing.")

7th:

Crane v. Gas Screw Happy Pappy, 367 F.2d 771, 774 (7 Cir. 1966), *cert. denied*, 386 U.S. 959 (1967):

("... clear and convincing evidence".)

National Labor Relations Board v. Nickey Chevrolet Sales, 493 F.2d 103, 106 (7 Cir. 1974):

("... clear and convincing evidence ...")

8th:

City of Campbell v. Arkansas-Missouri Power Co., 65 F.2d 425, 428 (8 Cir. 1933):

("... a degree of certainty that leaves no fair ground of doubt")

Kansas Power & Light Co. v. National Labor Relations Board, 137 F.2d 77, 79 (8 Cir. 1943):

("... something more than a bare preponderance of evidence is necessary ... This Court has stated that a 'degree of certainty' is required which leaves no fair ground of doubt. ... Other courts of appeals have expressed the rule as requiring clear and convincing proof ... Whatever qualifying adjective may be used in the various opinions, they are unanimous that a heavy burden of proof rests upon the party urging contempt ...")

9th:

Hanley v. Pacific Live Stock Co., 234 Fed. 522, 531 (9 Cir. 1916):

("... the trend of all the decisions is that the evidence of contempt must be convincing.")

National Labor Relations Board v. San Francisco Typographical Union, No. 21, 465 F.2d 53, 58 (9 Cir. 1972):

(An affidavit that certain respondents were "'probably' aware of the picketing . . . does not constitute clear and convincing proof that they participated in it".)

Hoffman v. Napa and Solano Counties Building and Construction Trades Council, AFL-CIO, unreported Memorandum Affirming Judgment, 9th Circuit, No. 72-1993, April 9, 1973:

("The evidence . . . is both 'clear and convincing'.")[12]

10th:

Atlas Corporation v. DeVillers, 447 F.2d 799, 803 (10 Cir. 1971), *cert. denied,* 405 U.S. 933 (1972):

(". . . overwhelming evidence . . .")

D.C.:

United States v. International Union, 89 F.Supp. 179, 180 (D.C.D.C., 1950), appeal dismissed, 190 F.2d 865 (D.C. Cir. 1951):

(". . . it is incumbent upon the party seeking the adjudication of [civil] contempt to prove guilt by clear and convincing evidence and not by a mere preponderance of evidence . . .")

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[12]In the instant case, the court below ignored its own decisions in *Hanley, Typographical Union, No. 21* and *Napa and Solano Counties.*

This accounts for every circuit except the First. While research has revealed no First Circuit case directly in point, that circuit, without mentioning the degree of proof required, has held that "the burden of proof in a contempt proceeding is on the petitioner" (*National Labor Relations Board v. Reed & Prince Mfg. Co.*, 130 F.2d 765, 768 [1st Cir. 1942]), citing *National Labor Relations Board v. Tupelo Garment Co., supra,* in which the Fifth Circuit held that "clear and convincing evidence was required.[13]

The court of appeals simply did not discuss this issue, nor did it consider these cases although the issue was raised and the cases were cited by petitioner in its briefs, at oral argument and in the petition for rehearing. The explanation for this must be that, in its concern with the purely criminal aspects of the case and with the issues raised by the other parties (particularly with whether or not they had been improperly denied a jury trial in the criminal contempt proceeding), this contention of petitioner was simply overlooked.[14]

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[13]The First Circuit in *Reed & Prince* also cited two Eighth Circuit cases requiring proof by "competent and material evidence". *National Labor Relations Board v. Rath Packing Co.*, 123 F.2d 684 (8 Cir. 1941) and *National Labor Relations Board v. Little Rock Mfg. Co.*, 123 F.2d 868 (8 Cir. 1941). We have already referred to the later Eighth Circuit case of *Kansas Power & Light Co. v. National Labor Relations Board*, 137 F.2d 77 (8 Cir. 1943), in which that court held ". . . something more than a bare preponderance of evidence is necessary . . ."

[14]Compare *United States v. United Mine Workers of America*, 330 U.S. 258, 299 (1947) where this Court observed that it is "the better practice to try the criminal case alone so as to avoid obscuring the defendant's privileges in any manner . . ." Here the "mingling of the civil and criminal proceedings" resulted in "substantial prejudice (*ibid*) to petitioner, whose independent conten-

If the decision below is permitted to stand, the Ninth Circuit will be alone in ignoring the long-settled rule as to the burden of proof in civil contempt proceedings and in holding that civil contempts may be established by a mere preponderance of the evidence. This conflict between the decision below and the virtually unanimous views of this Court and of the other circuits requires resolution by this Court and is the principal reason for granting this writ.

(2) Petitioner was adjudged in contempt for allegedly violating an order of whose "specific terms" it had no "actual notice". This is contrary to Fed. R. Civ. Pro. Rule 65(d). Although this point was urged below, the court of appeals did not so much as mention this rule nor, so far as appears in the opinion, did it ever even consider the issue. The bulk of the

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tions in the civil action were lost sight of in the larger proceedings. This is seen in the opinion of the court of appeals where "without detailing the evidence" (492 F.2d at 933), that court failed to distinguish between evidence which related to other parties and that which involved only petitioner. Thus the court consistently lumped petitioner with the other parties under the rubric "appellants" or "respondents" (see, e.g., 492 F.2d at 931), although petitioner was not a respondent in the earlier proceedings to which the court was referring. Addressing the question of the sufficiency of the language of the injunctions, the court said (492 F.2d at 933) "[a]ppellants were represented by counsel and no request for clarification was made". But petitioner was not involved in the injunction proceedings and it was not represented therein either by counsel or otherwise. Finally, although other "appellants" may (or may not) have "through their house papers boasted they were going to continue despite the court's injunctions" (492 F.2d at 933), the only "house paper" of petitioner received in evidence (Pet. Ex. 175) contains no such boast nor anything indicating knowledge on the part of petitioner of any of the injunction orders.

This commingling of the two types of contempt and the resultant failure to recognize the separate status of petitioner resulted in the substantial prejudice to petitioner against which this Court warned in *United Mine Workers, supra*. Compare, *Developments in the Law—Injunctions*, 78 HARVARD L. REV. 994, 1087 (1965).

opinion deals with other questions raised by other respondents in the criminal proceedings. Petitioner's contention of lack of adequate notice in the civil case seems to have been lost in the shuffle.

The Director did address this question but his suggestions that the service of the February *ex parte* order put petitioner "on notice" that, although petitioner was not named therein and although the order on its face expired on the day it was served, petitioner was "probably" thereby enjoined "thereafter" and that such service placed upon petitioner an "obligation" to inquire whether a "further order"[15] was made, simply will not hold water.

Rule 65(d) requires "actual notice" of the "specific terms" of an injunction as a pre-condition to a contempt finding.

> ". . . one basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters, etc.*, ... U.S. .....) 94 S.Ct. 1113 at 1126; 39 L.Ed. 2d 435 at 453; 42 L.W. 4331 at 4338 (1974).

See also, *International Longshoremen's Association v. Philadelphia Marine Trade Association*, 389 U.S. 64, 76 (1967); *cf. Yates v. United States*, 316 F.2d 718, 723 (10 Cir. 1963); *United States v. Hall*, 198 F.2d 726, 729 (2 Cir. 1952).

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[15]The only "further order" that is relevant to this proceeding is the one made two months later and which dealt, as we have shown, with an entirely different subject matter.

Even if the service of the February *ex parte* order gave petitioner knowledge of *its* contents, it did not and could not give petitioner notice of the contents of the April order. The one dealt with the picketing of newsprint at a dock in San Francisco; the other with the picketing of retail stores in Marin County.

> ". . . [An injunction] need only be obeyed to the extent it reasonably specifies the conduct to be prohibited . . . This language [of Rule 65(d)] strongly suggests that prohibited conduct will not be implied from such orders; that they are binding only to the extent that they contain sufficient description of the prohibited or mandated acts." *Ford v. Kammerer,* 450 F.2d 279, 280 (3 Cir. 1971).

In *New York Telephone Company v. Communication Workers of America,* 445 F.2d 39 (2 Cir. 1971), a civil contempt conviction was reversed in the following circumstance: In June of 1970 an injunction was issued against a work stoppage in a labor dispute involving a "switchmen's transfer dispute". The controversy between the parties continued and in January of 1971 the union was held in contempt of the June order because of a work stoppage involving the employer's "importation of workers from other areas" (445 F.2d at 43). The court of appeals held that, even if the order might be read to cover the subsequent activity, "several policy considerations counsel us to resolve all ambiguities in favor of the unions" (*ibid.* at 48). The first was Rule 65(d) itself and the decision in *International Longshoremen's Association v. Philadelphia Marine Trade Assn.,* 389 U.S. 64 (1967) where (at p. 76) this Court had cau-

tioned against vague decrees that could transform the contempt power from a "potent weapon" to a "deadly one". Another was Section 9 of the Norris-LaGuardia Act (29 USC §109) providing that every injunction in a case growing out of a labor dispute shall prohibit only "specific act or acts". The court therefore interpreted the injunction as applying only to the specific circumstances out of which it arose—the "controversy involving the transfer of switchmen" (445 F.2d at 51). It refused to apply it, despite the breadth of the language employed,[16] to the later controversy arising out of the "importation of workers from other areas".

The parallel to the instant case is obvious. The only order of which petitioner had "actual notice" (even ignoring that on its face it expired on the day it was served) was the one which prohibited picketing at a dock in San Francisco to prevent the delivery of newsprint to Journal. Yet petitioner was held in contempt for allegedly picketing retail stores in Marin County. To apply an order dealing with dockside picketing in San Francisco to retail store picketing in Marin County is, indeed, to transform the February *ex parte* order from a potent weapon to a deadly one.[17]

In affirming the district court, the court of appeals countenanced a procedure whereby petitioner was held

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[16]The June order had enjoined the defendants "from engaging in, or organizing, inducing or encouraging others to engage in any strike, work stoppage, boycott of overtime work, slowdown or any other form of interference with the business of plaintiff." (445 F.2d at 43).

[17]Compare, *Allee v. Medrano*, ____ U.S. ____, 42 L.W. 4736 at 4738 (May 20, 1974) (an injunction proscribing picketing at one location is not applicable to incidents which occurred at other locations).

in contempt because it guessed wrongly about the intended scope of the only order of which it had notice. No more than such a record could sustain the contempt in *Granny Goose Foods, supra,* where the union was "left to guess" (94 S.Ct. at 1126-1127; 39 L.Ed.2d at 453; 42 L.W. at 4338) about the duration of the order, can it sustain the contempt here.

The departure by the courts below from the salutary principles of Rule 65(d) and the resultant conflict between the decision below and the decisions of this court in *Granny Goose Foods* and *International Longshoremen's Association* and the decisions of the Third Circuit in *Ford v. Kammerer* and the Second Circuit in the *New York Telephone* case is an additional reason why the writ should be granted.

CONCLUSION

For either of the two reasons specified above the writ of certiorari herein sought should be granted.

Dated, San Francisco, California,
May 31, 1974.

Respectfully submitted,
NORMAN LEONARD,
Attorney for Petitioner.

GLADSTEIN, LEONARD, PATSEY AND ANDERSEN,
Of Counsel.

(Appendix Follows)

Appendix

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827
Roy O. Hoffman, Director, Region 20, NLRB, Plaintiff-Appellee, v. San Francisco Typographical Union Local No. 21, etc., Don Abrams; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, IBTCWHA; & Timothy J. Richardson, Defendants-Appellants.	No. 71-1828 No. 71-1829 No. 71-2073

[January 25, 1974]

Appeals from the United States District Court
for the Northern District of California

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

TRASK, Circuit Judge:

This is an appeal from two judgments holding appellant unions and union officers guilty of civil contempt and a portion of the appellants guilty of criminal contempt. The contempt actions were based upon alleged violations of two separate injunctions issued by the District Court under section 10(1) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, hereinafter called the Act. Appeal is taken pursuant to 28 U.S.C. § 1291. We affirm.

California Newspapers, Inc., doing business as San Rafael Independent Journal (Journal), is engaged at San Rafael, California, in publishing a daily newspaper of general circulation in Marin County called *The Independent Journal*. Jurisdictional requirements of the Act with respect to gross revenues and interstate commerce are clearly present.

Since on or about January 7, 1970, a labor dispute had existed between the Journal and San Francisco Typographical Union No. 21 (Local 21), International Typographical Union, AFL-CIO.[1] In that month a

*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

[1]In addition to the consolidated appeals from the District Court's orders finding appellants guilty of civil and criminal contempts which are at issue here, the unfair labor practice cases before the NLRB arising out of this controversy proceeded separately to final hearing and decision. San Francisco Typographical Union No. 21, 188 N.L.R.B. No. 108, 76 L.R.R.M. 1627 (1971). Local 21 and certain of its officers were cited for civil contempt in a companion case. The Board petitioned this court for enforcement of its order

strike was called against the newspaper and picketing began to the Journal's San Rafael publishing plant.

On February 11, 1970, the Regional Director of the National Labor Relations Board (the Board) filed with the District Court a petition for a temporary injunction pursuant to section 10(1) of the Act, against Local 21, Teamsters Local 85 and Teamsters Local 287. The petition was predicated upon a charge filed by the Journal that the named respondents were violating section 8(b)(4)(B) of the Act by engaging in secondary boycotts. Particularly they were picketing and inducing employees of various neutral employers at the Port of San Francisco to interfere with and prevent the delivery of newsprint to the Journal. After a hearing on February 13, 1970, at which the respondents presented no evidence, a temporary injunction was issued against all respondents enjoining further picketing at the pier and further acts designed to cause the neutral employers to refuse delivery of newsprint. On February 13, 1970, a Deputy United States Marshal served a copy of a Temporary Restraining Order identical with the Temporary Injunction on Longshoreman's Union, Local 10 which represented longshore employees at the Port of San Francisco. The injunction was based upon a finding that all three locals had engaged in a joint secondary boycott plan.

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and Local 21 appealed the civil contempt citation. Those two appeals were consolidated, argued and decided by this court in NLRB v. San Francisco Typographical Union No. 21, 465 F.2d 53 (9th Cir. 1972).

On April 28, 1970, the Board filed a second petition charging that Local 21 was conducting illegal secondary boycott activities at entrances to various retail stores in the vicinity to induce the public not to patronize the stores because they were advertising in the Journal. Local 21 stipulated that it would not contest the facts charged, waived a hearing and consented to the issuance of an injunction forthwith as prayed for. The court considered the petition and issued the injunction on April 28, 1970.

Both the February 13 injunction and that of April 28 were directed to the named respondents and "their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them."

Notwithstanding the April 28 injunction Local 21 continued to picket the retail stores in substantially the same way. On May 28, 1970 after hearing, the court found Local 21 and certain of its officers and agents including its vice-president DeMartini and organizer Abrams in civil contempt and directed that they purge themselves, inter alia, by fully complying with the injunction order. The court retained jurisdiction for the purpose of imposing a compensatory fine and considering a compliance fine.

Despite the civil contempt order, the tempo of illegal activities in violation of both injunctions increased, with other locals participating. These included Longshoremen's Local No. 10; Teamsters No.

70 and James R. Muniz, its president; and Teamsters No. 85 and Timothy Richardson, its business manager. The effort broadened to boycott or quarantine San Rafael and all of Marin County, curtailing deliveries of all supplies, causing traffic tie-ups and attempting to prevent delivery trucks from entering exit ramps from main highways to enter the city.

On October 10, 1970, the petition in the present case was filed seeking adjudication in civil and criminal contempt for violations of both the February 13 injunction and that of April 28. At the outset of the hearing in the District Court the criminal and the civil cases were severed with the criminal to be tried first. A request for a jury trial in the criminal case was denied. On December 24, 1970, at the close of the hearing the District Court determined that the allegations of the petition had been proved beyond a reasonable doubt with respect to union appellants Local 21, Teamsters Local 70 and Teamsters Local 85, and individual appellants Abrams, Muniz and Richardson, and that those appellants were guilty of criminal contempt. The court also found that the allegations of civil contempt had been established by a preponderance of the evidence as to all of those guilty of criminal contempt, plus Longshoremen's Local 10 and individual appellant DeMartini. The order of December 24 with respect to the civil action contains certain standard purgation requirements in the way of notices, and imposes a compliance fine of $7,500 a day against the unions and $100 per day against individual appellants for each day such individual fails

to comply with the order. Finally, it retains jurisdiction for the purpose of imposing a compensatory fine.

In the criminal case a fine was levied against each of the three unions in the sum of $25,000 with a provision for remission of $15,000 of each fine if the court is satisfied at the end of one year with the appellants' compliance with the court's orders. Sentence of individual defendants was suspended and each was put on probation for one year. If probation was violated, each would subject himself to the power of the court to impose a sentence of imprisonment up to, but not exceeding, six months. A compensatory fine was later imposed in the sum of $21,208.15 in the civil proceeding.

Appellants raise a number of questions directed at the sufficiency and admissibility of evidence adduced during the proceeding, the inadequacy of the language of the temporary injunctions to put appellants upon notice of the activities within the scope of the injunctions, and the technical deficiency of certain of the pleadings. We have examined each in view of the importance of the proceeding and find that each is without substantial merit. Without detailing the evidence, which was voluminous, it clearly justified and supported the court's findings as to both criminal and civil contempts. The language of the injunctions was abundantly sufficient. Appellants were represented by counsel and no request for clarification was made. On the contrary appellants through their house papers boasted they were going to continue despite the court's injunctions. The same ap-

plies to the argument of the lack of precision of the allegations of the petition for an adjudication of criminal contempt. Appellants and their attorneys were fully apprised of the charges; they deliberately chose to risk not to obey them.

Where the purposes of issuing the citation for contempt is remedial in scope in order to enforce compliance with the court's order, the contempt is civil. *Shillitani v. United States,* 384 U.S. 364, 368-70 (1966). In such cases a jury trial is not required. *Shillitani, supra; Cheff v. Schnackenberg,* 384 U.S. 373, 377 (1966). No request for a jury trial was made in the civil contempt cases here. Where a fine is imposed or the purpose is punishment, the contempt is criminal. *Penfield Co. of California v. SEC,* 330 U.S. 585, 590-91 (1947); *Nye v. United States,* 313 U.S. 33 (1941). It is from the criminal contempt proceedings which imposed fines and probation that complaint is made of the denial of a jury trial.

The court has jurisdiction to grant injunctive relief or temporary restraining orders in order to protect the public welfare or preserve the status quo pending a hearing or to enforce its orders. We pointed out in *San Francisco-Oakland Newspaper Guild v. Kennedy,* 412 F.2d 541, 544, 545n.3 (9th Cir. 1969):

> "All that is required under Sec. 10(1) for a regional director to petition for such an injunction is reasonable cause to believe an unfair labor practice is being committed. The preliminary injunction should be granted by the court if the court finds that the factual allegations and the propositions of law underlying the regional di-

> rector's petition are not insubstantial and frivolous so that he has reasonable cause for believing the Act has been violated, and if the court finds that injunctive relief is appropriate. On appeal, review is limited to a determination of whether the district court's findings are clearly erroneous.
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> . . . .
>
> "Neither the district court nor this court is called upon to decide whether in fact a violation of the Act has been committed; the ultimate determination with respect to this question is reserved exclusively for the Board, subject to review by the courts of appeals pursuant to Sec. 10(e) and (f) of the Act . . . ."

The court must also have the power to enforce its orders if the Act is to be effective. *Madden v. Grain Elevator, Flour & Feed Mill Workers,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965); *Evans v. Typographical Union,* 81 F.Supp. 675 (S.D. Ind. 1948).

Here the District Court, acting upon the petition of the Board, did grant injunctive relief under Section 10(1) of the Act, 29 U.S.C. § 160(1).[2] When that injunctive relief was disregarded civil sanctions were imposed and when the court's orders were willfully flaunted and disobeyed criminal penalties followed.

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[2] "Whenever it is charged that any person has engaged in an unfair labor practice . . . the officer or regional attorney . . . shall . . . petition any United States district court . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law . . . ." 29 U.S.C. § 160(1).

In support of their contention that they were erroneously denied a jury trial, appellants rely upon 18 U.S.C. § 3692, which reads as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

Appellants acknowledge that the language represents a codification of the Norris-LaGuardia Act, in which the language granting contempt powers was originally limited to "all cases arising under this [Norris-LaGuardia] Act." Sec. 11, 29 U.S.C. § 111. *See United States v. United Mine Workers,* 330 U.S. 258, 298 (1947). It is argued that a revision of 1948 (Act of June 25, 1948, ch. 645, 62 Stat. 701-02, 844), which provided that the contempt power extended to "all cases . . . arising under the laws of the United States . . .", necessarily is all inclusive and thus envelops within its scope the present NLRA controversy. Thus, the argument concludes, a jury is required if requested.

The thesis of appellants is too broad. Section 3692 does not stop when it refers to "all cases of contempt arising under the laws of the United States . . . ." It limits the definition by adding after the words "laws of the United States," the words "governing the issuance of injunctions or restraining or-

ders in any case involving or growing out of a labor dispute." The purposes of the Norris-LaGuardia Act to limit and restrict the equitable powers of the courts to intervene in labor disputes between private employers and unions are not the same as the powers involved in the administrative scheme of the Labor Management Relations Act and its amendments. There is no reason to believe that Congress intended its grant of equitable powers to district courts as embodied in section 10(1) of the Act, 29 U.S.C. § 160(1), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act, 29 U.S.C. § 111, into 18 U.S.C. § 3692. *Brotherhood of Local Firemen & Enginemen v. Bangor & Aroostock R.R. Co.*, 380 F.2d 570, 580 (D.C. Cir), *cert. denied*, 389 U.S. 327 (1967); *Madden v. Grain Elevator, Flour & Feed Workers*, 334 F.2d 1014, 1020 (7th Cir. 1964). *See Schauffler v. United Association of Journeymen*, 230 F.2d 572 (3d Cir.), *cert. denied*, 352 U.S. 825 (1956); *NLRB v. Red Arrow Freight Lines*, 193 F.2d 979 (5th Cir. 1952).

Although the authorities cited pertain principally to civil contempts we hold to the view that the jurisdiction of the district courts to enforce their orders made under section 10(1) of the Act applies as well to criminal contempts, and that a jury trial is not compelled by virtue of the provisions of 18 U.S.C. § 3692.

Having thus concluded, it remains necessary to consider appellants' contention that the court erred in not summoning a jury upon request because of the

seriousness of the violations charged and the resulting weight of the penalties imposed. The trial court imposed two penalties in the criminal proceeding. As to the individuals it found guilty of criminal contempt, it suspended sentence and placed them on probation for one year, determining that if the condition of probation was broken they would subject themselves to the power of the court to impose a sentence of imprisonment of "up to but not exceeding, six months." It appears well established that jury trials are not constitutionally required in those cases where the penalty does not exceed six months' imprisonment. *Bloom v. Illinois,* 391 U.S. 194 (1968); *Cheff v. Schnackenberg,* 384 U.S. 373 (1966); *United States v. Barnett,* 376 U.S. 681 (1964); *Green v. United States,* 356 U.S. 165 (1958). *See also Duncan v. Louisiana,* 391 U.S. 145 (1968).

Cheff, supra, was an instance of criminal contempt of an order of the Court of Appeals of the Seventh Circuit arising out of proceedings before the Federal Trade Commission. Cheff was found guilty and sentenced to six months' imprisonment. His petition for certiorari was granted with review limited to the question whether after a denial of a demand for a jury, a sentence of imprisonment of six months was constitutionally permissible under Article III and the Sixth Amendment.[3] The Court held that it was.

[3] "The Trial of all Crimes, except in Cases of Impeachment, shall be by jury . . . ." U.S. Const., art. III, § 2.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." *Id.,* amend. VI.

It stated that it was "constrained to view the proceedings" as "equivalent to a procedure to prosecute a petty offense" which under its decisions did not require a jury trial.[4] Clearly, then, it appears that sentences of imprisonment for a term of six months or less are neither constitutionally impermissible nor proscribed by the Supreme Court under its supervisory power over the inferior federal courts. We therefore hold that the criminal penalties meted out to the individual here in the form of suspended sentences and probation are not constitutionally invalid.

As to the appellant unions (Local 21, Local 85 and Local 70), each had imposed upon it a fine of $25,000. Payment of $15,000 of that sum was suspended for one year and was then to be remitted to the union upon a determination by the court that the union had not engaged in any further violations of injunction orders. The unions contend here that the amount of the fines establish them as other than "petty" in nature and therefore the denial of their requests for a jury trial was erroneous. The basis of this ar-

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[4]The Court referred to a portion of 18 U.S.C. § 1 (1964 ed.), "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months is a 'petty offense.'" 384 U.S. at 379.

It also concluded its opinion by an expression of its point of view in recognition of its responsibility for "effective administration" of the federal courts, stating:

> "Therefore, in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." *Id.* at 380.

gument is that the full text of 18 U.S.C. § 1(3) provides:

> "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

Since the Court in *Cheff* relied upon this statute for its characterization of a six months' maximum imprisonment as being "petty," appellants argue that the statute must necessarily determine the $500 fine as being the maximum fine which could permissibly be characterized as "petty" and thus imposed without a jury trial or a waiver of jury. Although there is a syllogistic allure in the argument, decisions subsequent to *Cheff* cast doubts upon the contention's validity. *Bloom v. Illinois, supra,* involved a conviction in an Illinois state court for criminal contempt and a sentence to imprisonment of 24 months as the penalty. The defendant's timely demand for a jury trial had been refused, and his conviction affirmed. Certiorari having been granted, 386 U.S. 1003 (1967), the Court reexamined the limitations of the rule that criminal contempts could be tried without a jury. *Duncan v. Louisiana, supra,* decided the same day as *Bloom,* had held that the right to a jury trial extended to the states.

In *Bloom,* the Court recounted that in *Green v. United States, supra,* it had held to be constitutionally permissible summary trials without a jury in all contempt cases, based upon common law rules and upon the concept that such power in the courts was consid-

ered essential to the proper and effective administration of justice. It then pointed out that *Barnett, supra,* had signalled a possible change of view in the event of a severe punishment in a criminal contempt case. Two years later, in 1966, *Cheff, supra,* held that six months' imprisonment was a petty and not a severe punishment and did not require a jury. The Court in Bloom stated that it "accept[s] the judgment of *Barnett* and *Cheff* that criminal contempt is a petty offense unless the punishment makes it a serious one."[5] 391 U.S. at 198. As to when the offense ceases to be "petty" and becomes "serious" the Court concluded:

> "In *Duncan* we have said that we need not settle 'the exact location of the line between petty offenses and serious crimes' but that 'a crime punishable by two years in prison is . . . a serious crime and not a petty offense.'" *Id.* at 211.

In this plethora of discussion establishing and reexamining rules as to when a jury trial is required, there is hardly a word spoken about the line at which the measure in dollars of a fine causes the contempt to cease being "petty" and to become "serious." Certainly we cannot understand *Cheff* as holding that the sum of $500 constitutes that line simply because it uses 18 U.S.C. § 1(3) to express a point of division between permissible and impermissible terms of im-

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[5]The opinion in *Bloom* does not comment on the statement in *Cheff* that "sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." 384 U.S. at 380. The implication is that such sentences are considered serious.

prisonment at which a jury is required.[6] A deprivation of his liberty for a period of more than six months could certainly be serious to any individual, whereas a fine of $500 to a large corporation or to a large union might have no deterrent or punitive effect at all.[7]

A distillate of the holdings of the more modern decisions of the Supreme Court on the question of the right to trial by jury in a criminal proceeding leads us to believe that if there is an existing statute which authorizes the imposition of a penalty of more than six months imprisonment, the penalty is not a "petty" one but a "serious" one and a jury or waiver thereof is required. *Duncan v. Louisiana, supra.* If the criminal proceeding is in contempt with no statutory penalty but an open-ended penalty resting on the court's discretion, a hindsight determination is made upon review to determine whether the offense was "petty" or "serious" based upon the severity of the punishment. If the penalty imposed is six months imprisonment or less, then the offense was a "petty" one and

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[6] In *Duncan*, the Court pointed out that because there was no statute involved in *Cheff* defining the penalty for criminal contempt in terms of months or years of imprisonment, the Court was forced to look at the penalty actually imposed as the best evidence of the seriousness of the offense. 391 U.S. at 162 n. 35.

[7] It is interesting to note that in *Cheff*, his codefendant Holland Furnace Co. was fined $100,000. Both Cheff and the corporation petitioned for certiorari. The petition of Cheff was granted and in the opinion the question of petty versus non-petty measured by length of imprisonment was discussed at length. The petition for certiorari of the corporation was denied and the Court in *Cheff* did not discuss a measure of dollars which might define a fine as being petty or serious.

no jury was required. *Cheff v. Schnackenberg, supra; Duncan v. Louisiana,* 391 U.S. 145, 162 n.35.

Where the contemnor is a corporation, association, union or other artificial person and a fine is the ordinary punishment, the rules become obscure. The Court has never said that while a $500 fine marks the contempt as being "petty" under 18 U.S.C. § 1(3) with no jury required, a fine of $501 labels it as "serious" with the necessary consequence that a jury must have been enpaneled.[8] A fine which might under all of the circumstances constitute only a slap on the wrist of one artificial entity might be a "serious" penalty to another.[9] Accordingly, we can go no further than to decide this case, and upon that basis we do not find that the judgment of the District Court was constitutionally prohibited.

The judgment is therefore affirmed.

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[8]We note *United States v. R. L. Polk & Co.,* 438 F.2d 377 (6th Cir. 1971), to the contrary but are not persuaded by it.

[9]The six month-$500 provision of 18 U.S.C. § 1(3) defining the limits of "petty" offenses became law in 1930. Act of Dec. 16, 1930, ch. 15, 46 Stat. 1029. While the value of personal freedom has not depreciated in the intervening period the same cannot be said either of the value of the dollar or of the growth in dollars of the assets of large organizations.

United States Court of Appeals
for the Ninth Circuit

Roy O. Hoffman, Director, Region 20, NRLB, Plaintiff-Appellee, v. International Longshoremen's & Warehousemen's Union, Local No. 10, Defendant-Appellant.	No. 71-1818 No. 71-1819 No. 71-1820 No. 71-1821
Roy O. Hoffman, Director, Region 20, NRLB, Plaintiff-Appellee, v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, IBTCWHA, & James R. Muniz, Defendants-Appellants.	No. 71-1822 No. 71-1823 No. 71-1827 DC 70-895 WTS

[Mar. 26, 1974]

Before: MERRILL and TRASK, Circuit Judges, and KELLEHER,* District Judge

ORDER

The panel as constituted in the above case has voted to deny the petitions for rehearing and to reject the suggestions for rehearing en banc.

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*Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

The full court has been advised of the suggestions for en banc hearings, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected.